



## OPINIONS OF THE ATTORNEY-GENERAL

have always been considered as having time service to warrant maximum rate of the institutions. Under the present bill, may we continue to consider this service as acceptable?"

The evident general purpose of chapter 685, Laws of 1930, was to establish a new or revised scheme or schedule of increase in salaries and wages for officers and employees of institutions reporting to your Division and for graduated and periodic increases for "continuous time service" and also a new basis for commutation in lieu of maintenance.

We will first consider the inquiry "(a)" as to what constitutes "continuous service" under the act in question.

There is no specific definition of this term, as applied to civil service, to be found in any statute or in the Civil Service Law, Rules or Regulations.

"Words and Phrases Judicially Defined" states the word "continuous" to mean "without interval or interruption."

Section 31 of the Civil Service Law which covers separation from the service is as follows:

"Any person who while holding a position in the competitive class under the civil service law or rules, has been separated from the service through the abolition of a department, office or institution, or any section, bureau or division thereof, or whose position is abolished or made unnecessary, through no delinquency or misconduct on his part shall be deemed to be suspended without pay, which suspension shall be made in the inverse order of original appointment in the service, and shall be entitled to have his name entered upon a preferred list. The head of the department, office or institution in which such person was employed shall furnish the State Civil Service Commission, or if the position is in the service of a city the municipal civil service commission of said city, a statement showing his name, title of position, date of appointment, and the date of and reason for his separation from the service. It shall be the duty of the State Civil Service Commission or, if the person suspended shall have been in the service of a city, of the municipal civil service commission of said city forthwith to place the name of said person upon a preferred list for the office, or position, in which he has been employed, or for any corresponding or similar office or position in the same group and grade as the position he formerly held, and to certify from such list the names of persons for reinstatement, in the order of their original appointment, before making certification from any other list, for such position or similar position. The eligibility for reinstatement of a person whose name appears upon any such list shall not continue for a period longer than two years from the date of separation from the position so abolished, except that eligibility for reinstatement of such a person who shall have been separated from the service by reason of the provisions of the

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*state departments law* shall continue for a period of *four*  
*years* from the date of separation from the position abolished  
or made unnecessary by such law; and failure to accept, after  
reasonable notice, an office or position to which he has been  
certified shall be held to be a relinquishment of his right to  
reinstatement as herein provided."

Civil service rule 16, subdivision 1, relating to reinstatement in  
service is in part as follows:

"Any person who has held a position by appointment under  
the civil service rules, as the result of examination, or a per-  
son who did not enter the service as the result of examina-  
tion but who has served continuously in the competitive class  
for at least three years, and who has been separated from  
the service through no delinquency or misconduct on his part,  
by removal, resignation, suspension, by leave of absence,  
without pay, *may be reinstated* without re-examination in a  
vacant position in the same office, department or institution,  
and in the same group, subdivision and grade, *within one year*  
from the date of such separation; or *may be appointed within*  
*one year* from the date of separation from the service, to a  
position to which he was eligible for transfer; provided that  
for original entrance to the position proposed to be filled  
by reinstatement, or appointment, there is not required by  
these rules, in the opinion of the commission, an examina-  
tion involving essential tests or qualifications different from  
or higher than those involved in the examination of the  
original entrance to the position formerly held by the per-  
son proposed to be reinstated or appointed. *Absence on*  
*leave for more than one year shall be deemed the equivalent*  
*of a resignation from the service upon the date of com-*  
*mencement of such absence.* \* \* \* In computing period  
of time under this subdivision, time of active service in  
the military or naval forces of the United States or of the  
State of New York, and time of employment in the produc-  
tion, construction or manufacture of equipment or supplies  
or in war relief or education work for such forces, shall not  
be considered."

Subdivision 2 of rule 16 is as follows:

"Any person who while holding a position in the competi-  
tive class under the civil law or rules, has been separated  
from the service through the abolition of a department, office  
or institution or any section, bureau or division thereof, or  
whose position is abolished or made unnecessary, shall be  
deemed to be *suspended without pay*. Such suspension shall  
be made in inverse order of original appointment in the serv-  
ice. The head of the department, office or institution in which  
such person was employed shall furnish the Civil Service  
Commission with a statement showing his name, title of posi-



tion, date of appointment, and date of and reason for his separation from the service. The Commission shall thereupon enter the name of such person upon a preferred list for the office, or position, in which he has been employed, or for any corresponding or similar office or position in the same group and grade as the position he formerly held, and shall certify from such list the names of persons for reinstatement, in the order of their original appointment, before making certification from any other list, for such position or similar position. The eligibility for reinstatement of a person whose name appears upon such preferred list *shall continue for a period of two years* from date of separation from the service. Failure to accept, after reasonable notice, an offer or position to which he has been certified shall be held to be a relinquishment of his right to reinstatement as herein provided."

Section 19 of the Civil Service Law covering "Official Roster," etc., provides in part as follows:

"The official roster shall show opposite or in connection with each name the date of appointment, employment, promotion or reinstatement, the compensation of the position, the date of commencement of service, and date of transfer in or separation from service by dismissal, resignation, cancellation of appointment or death."

From the above quotations we have what may be considered a definition or explanation of what constitutes separation from the service or termination of service and all of which would have a bearing upon what might constitute "continuous service" (if indeed it could not be said to define "continuous service"), at least inferentially or by indirection since there is no specific definition of such term in the Civil Service Law or elsewhere in the statutes. (See *People ex rel. Davie v. Lynch*, 164 App. Div. 517, which construed section 19 of the Civil Service Law and Civil Service Rule 16 as such rule read in 1914).

I am of the opinion that "continuous service," as used in chapter 685, Laws of 1930, and under the Civil Service Law, may be defined to mean such service as is not broken or interrupted by a period of more than one year in case of a voluntary separation from service involving no delinquency or misconduct, or by leave of absence, resignation, etc. (see section 19 of the Civil Service Law and Civil Service Rule 16) or not broken by a period of more than two years in case of separation from the service "through abolition of a department, office or institution or any section, bureau or division thereof or whose position is abolished or made unnecessary" (See section 31, Civil Service Law); or not broken by a period of more than four years where the separation from service resulted "by reason of the provisions of the State Departments Law" (See section 31, Civil Service Law).

However, the "time forces of the United States of employment in the of equipment or support such forces, shall not ruption of continuous vision 1).

Now, as to the inquiry

The purposes of this periodic increases in salary. And section 3 of the act of salaries and commu-

Although the term "section 3 and referen "wages" and not also the statutes to designa sometimes to designa employees, I am of the as well as employees, affirmative.

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Now, as to question Laws of 1930, which w division under your exi to teachers qualified answer in the affirmati

Dated: July 8, 1930.

To the Division of S ment.

MOTOR VEHICLES—DISPOSIT  
TRAFFIC LAW, SECTION

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Hon. Morris S. Trem the State's right to clai of the village of Mam imposed for violations ordinances, in regard

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## OPINIONS OF THE ATTORNEY-GENERAL

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of and reason for his Commission shall thereupon upon a preferred list he has been employed, office or position in the he formerly held, and of persons for reinstatement appointment, before ist, for such position or reinstatement of a person erred list shall continue of separation from the sonable notice, an offer ified shall be held to be reinstatement as herein

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service," as used in Civil Service Law, may roken or interrupted by a voluntary separation misconduct, or by leave 19 of the Civil Service ten by a period of more the service "through tution or any section, n is abolished or made e Law); or not broken re the separation from ns of the State Depart- e Law).

However, the "time of active service in the military or naval forces of the United States or of the State of New York, and time of employment in the production, construction or manufacturing of equipment or supplies or in war relief or education work for such forces, shall not be considered" as an absence or an interruption of continuous service (See Civil Service rule 16, subdivision 1).

Now, as to the inquiry "(b)."

The purposes of this act as stated in its title is to provide "for periodic increases in salaries of officers and employees \* \* \*." And section 3 of the act appropriates the money "for the payment of salaries and commutation of officers and employees \* \* \*."

Although the term "officers" appears only in the title and in section 3 and reference is made elsewhere in the act only to "wages" and not also to "salary," the term generally used in the statutes to designate the compensation of officers and also sometimes to designate the compensation of both officers and employees, I am of the opinion the act affects and refers to officers as well as employees, and I answer your inquiry "(b)" in the affirmative.

Now as to the inquiry "(c)," I have been advised that this question has been withdrawn. Accordingly, no answer is made.

Now, as to question "(d)," this in effect, is covered by the answer to your question "(a)" (supra).

Now, as to question "(e)," there is nothing in chapter 685, Laws of 1930, which would require a change in the practice of the division under your existing schedule in giving time service credit to teachers qualified under the Education Law. I therefore answer in the affirmative.

Dated: July 8, 1930.

Very truly yours,

HAMILTON WARD,  
Attorney-General.

To the Division of Standards and Purchase, Executive Department.

~~MODE VEHICLES—DISPOSITION OF FINES FOR SPEEDING—VEHICLE AND TRAFFIC LAW, SECTIONS 54, 56, 58, 73.~~

~~Where merely speeding is charged, the fine for a traffic violation in a city or village which has adopted a speed limit belongs to the municipality. But where either reckless driving, or failure to drive in a careful and prudent manner, is involved, the fine belongs to the State, no matter what the speed was.~~

~~Hon. Morris S. Tremaine, State Comptroller, asks in regard to the State's right to claim certain fines imposed in the police court of the village of Mamaroneck. It is stated that the fines were imposed for violations of chapter 16, section 1, of the village ordinances, in regard to speeding, and it is assumed that such~~